

15A Am. Jur. 2d Clerks of Court § 47

American Jurisprudence, Second Edition | May 2021 Update

Clerks of Court

Lonnie E. Griffith, Jr., J.D.

V. Powers and Duties

C. Particular Powers and Duties

1. Filing and Recording of Papers

§ 47. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Clerks of Courts](#)  64 to 69

Forms

Additional forms relating to clerk's certificate, generally, see Am. Jur. Pleading and Practice Forms—Clerks of Court [\[Westlaw®: Search Query\]](#)

Forms relating to certificate of clerk, generally, see Am. Jur. Legal Forms 2d—Clerks of Court [\[Westlaw® Search Query\]](#)

It is the official duty of the clerk of a court to record¹ or file all the papers in a cause presented by the parties, and to indorse the correct date of the filing on them.² The duty is purely ministerial³ and the clerk may not refuse to perform except on the order of the court.⁴

Caution:

A clerk may refuse to accept a filing for nonpayment of filing fees unless a credit or waiver is allowed,⁵ or where certain necessary documents are omitted from the filing,⁶ and statutes or court rules may expressly authorize the clerk to refuse to accept papers for filing where a complaint is submitted by a person who has been found to be a "vexatious litigator."⁷

Observation:

A policy adopted by a clerk of court, that papers submitted for filing after regular hours would not be filed until the following day, complied with statutory guidelines and was within the clerk's discretion.⁸

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Footnotes

- 1 Nash v. Campbell County Fiscal Court, 2011 WL 1620587 (Ky. 2011).
- 2 Estate of Johnson v. Ciarpelli, 71 A.D.3d 1482, 896 N.Y.S.2d 752 (4th Dep't 2010); In re Simmonds, 271 S.W.3d 874 (Tex. App. Waco 2008).
- 3 Benson v. District Clerk, 331 S.W.3d 431 (Tex. Crim. App. 2011) (writ of habeas corpus).
- 4 Cave v. Elliott, 190 Md. App. 65, 988 A.2d 1 (2010); In re Smith, 270 S.W.3d 783 (Tex. App. Waco 2008).
- 5 §§ 37, 38.
- 6 § 49.
- 7 In re Smith, 270 S.W.3d 783 (Tex. App. Waco 2008).
- 8 Hartford Citizens for Responsible Government v. City of Hartford Bd. of Zoning Appeals, 313 Wis. 2d 431, 2008 WI App 107, 756 N.W.2d 454 (Ct. App. 2008).

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1. Filing and Recording of Papers

§ 48. Correction of errors

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West's Key Number Digest

West's Key Number Digest, [Clerks of Courts](#)  69

If a court clerk makes a mistake in recording a document, the court may amend the record.¹ It is the province of the court alone to correct clerical errors made by the court clerk.²

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Footnotes

- ¹ [State v. Pena, 16 Conn. App. 518, 548 A.2d 445 \(1988\).](#)
Court would correct assignment of cause number for complaint based on different operative dates. [Tyrone v. Tyrone, 32 So. 3d 1206 \(Miss. Ct. App. 2009\).](#)
- ² [State v. Pena, 16 Conn. App. 518, 548 A.2d 445 \(1988\).](#)

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1. Filing and Recording of Papers

§ 49. Documents deficient in form, substance, or timeliness

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West's Key Number Digest

West's Key Number Digest, [Clerks of Courts](#)  69

When a court clerk receives documents which are not in proper form, the clerk must file and stamp those documents with the date on which they were received.¹ A clerk of a court may not reject a pleading for form,² general informality,³ originality,⁴ lack of statutory authorization for the filing,⁵ or on substantive grounds,⁶ unless the clerk acts under specific rule or statutory authority to reject pleadings that lack certain documents.⁷ The lack of a civil case cover sheet is not a sufficient omission to reject a filing.⁸

A filing, untimely on its face, is nonetheless a filing that requires action by the court clerk, leaving to the court the ultimate question of timeliness or other merit.⁹

CUMULATIVE SUPPLEMENT

Cases:

Noncompliance section of rule governing technical requirements for filing of documents, which prohibited a clerk from refusing to file any document because of noncompliance with the rule, applied only to paper documents that fell within an exception to mandatory electronic filing rule, and thus did not apply to unauthorized attempt to make a paper filing and did not require clerk to convert paper into electronic filing. West's F.S.A. R.Jud.Admin.Rule 2.520(f). [United Bank v. Estate of Frazee](#), 197 So. 3d 1190 (Fla. 4th DCA 2016).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Glauner v. State](#), 107 Nev. 482, 813 P.2d 1001 (1991).
The clerk of court properly assigned new case number to a claim where the complaint did not identify itself as a renewal of a prior counterclaim. [Meyer v. Minster Farmers Coop. Exchange Co., Inc.](#), 2009-Ohio-4933, 2009 WL 2986971 (Ohio Ct. App. 3d Dist. Shelby County 2009).
- 2 [Hooker v. Sivley](#), 187 F.3d 680 (5th Cir. 1999); [Cave v. Elliott](#), 190 Md. App. 65, 988 A.2d 1 (2010).
- 3 [In re Smith](#), 270 S.W.3d 783 (Tex. App. Waco 2008).
- 4 [Gehring v. Goodman](#), 25 Misc. 3d 802, 884 N.Y.S.2d 646 (Sup 2009) (copies of affidavits).
- 5 [Estate of Johnson v. Ciarpelli](#), 71 A.D.3d 1482, 896 N.Y.S.2d 752 (4th Dep't 2010) (filing within clerk's authority without guidance by law).
- 6 [Hooker v. Sivley](#), 187 F.3d 680 (5th Cir. 1999); [McKeown v. Bailey](#), 731 A.2d 628 (Pa. Super. Ct. 1999).
- 7 [Blundon v. Taylor](#), 364 Md. 1, 770 A.2d 658 (2001); [Cable v. Hatfield](#), 202 W. Va. 638, 505 S.E.2d 701 (1998).
- 8 [Maginn v. City of Glendale](#), 72 Cal. App. 4th 1102, 85 Cal. Rptr. 2d 639 (2d Dist. 1999).
- 9 [In re Smith](#), 270 S.W.3d 783 (Tex. App. Waco 2008).

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